

State Water Contractors

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April 28, 2003

Ms. Kim Cotto
Department of Water Resources
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Alameda County FC&WCD, Zone 7

**Re: Oroville Facilities Relicensing FERC Project No. 2100: Comments to NEPA
Scoping Document Two and Amended CEQA Notice of Preparation**

Dear Ms. Cotto:

The following comments are submitted on behalf of the State Water Contractors (SWC). The SWC is actively participating in the Oroville relicensing process, and as the WATER SUPPLY contractors to the State Water Project (SWP) through the Department of Water Resources (DWR), we have a direct and profound interest in the outcome of the FERC proceeding. We offer these comments to Scoping Document 2 and the amended CEQA Notice of Preparation (hereafter SD2) and invite any questions or comments you may have with respect to our concerns.

In Section 1.0, Introduction, SD2 indicates that DWR may prepare a joint CEQA/NEPA document. Since CEQA requires the development and implementation of mitigation measures, we believe that it must be made clear with respect to any submittal to FERC that the mitigation measures required under CEQA will not be included as conditions under the FERC license. It is important that DWR distinguish those areas where FERC has jurisdiction and where it does not. As to mitigation measures that are common to both CEQA and FERC jurisdiction, the basis for FERC's authority should be made clear.

The Introduction also states that approximately six-dozen study programs must be concluded during mid-2003 to allow sufficient time to prepare the necessary EIS-level and EIR alternative evaluations and develop other actions. It is unclear what is meant by the "conclusion" of study programs. Of the studies that are ongoing, many will not be completed by mid-2003. SD2 should clarify what the deadlines and requirements are for completion of study programs, which studies must be completed prior to submittal of the application for a new license, and which studies may be completed after the submittal of the application.

According to Figure 1, the Tentative Environmental Review Process Schedule, DWR proposes to commence settlement negotiations and development of the proposed settlement agreement starting in the second quarter of 2004 and concluding before the end of the third quarter of 2004. We do not believe that this allows sufficient time for settlement negotiations and development of a settlement agreement that will be adequate for those issues requiring local enforcement and those issues that may be outside of FERC jurisdiction. The schedule appears to be an overly optimistic assessment of the likelihood of uncontentious settlement discussions. We suggest that the commencement of negotiations on settlement principles regarding locally-enforced items and non-jurisdictional items be moved to the third quarter of 2003 and that it conclude at the beginning of the second quarter of 2004. This will hopefully permit incorporation in the Preliminary Draft Environmental Assessment (PDEA) of some of the likely settlement alternatives/proposals or at least a range of alternatives. It will provide several months for the preparation of environmental documents and resolution of any disputes that may remain during development of the final settlement agreement.

Figure 1 also anticipates that the CEQA documents will be prepared and completed prior to the completion of FERC's NEPA documentation. Typically in a FERC proceeding, the NEPA documents are completed first and the state then relies on the NEPA documents as the underlying document for purposes of completion of the state environmental document. Here, DWR proposes to prepare the CEQA and NEPA documents in parallel. Alternative timelines should be considered for the preparation of a joint CEQA/NEPA document as well as the use of the NEPA document as the basis for the CEQA document.

Figure 1 also fails to include the 401 certification process by the State Water Resources Control Board (SWRCB). SD2 should clarify how DWR and the SWRCB will interface, when there will be opportunity for comment on the 401 certification process and any mitigation measures proposed by the SWRCB.

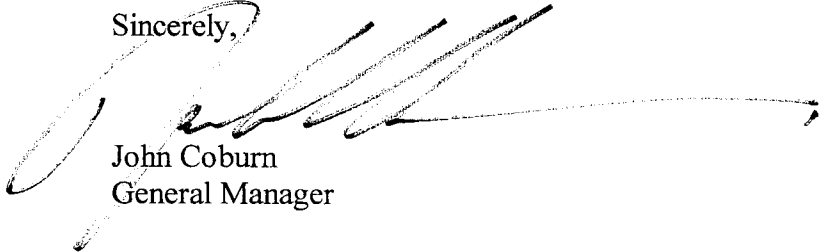
As noted in our original comments, there is no general legal requirement in this proceeding to reduce impacts to less-than-significant levels. Rather, there is a requirement in CEQA to minimize or mitigate impacts where feasible. There are also other legal requirements imposed by both state and federal laws, including the federal hydropower licensing laws. We suggest revising Section 5.2 to better reflect the legal requirements and procedures that would apply regarding issues prompted solely by CEQA requirements in the event that a settlement is not reached and an application is submitted by DWR. At a minimum, this paragraph should note that the legal requirement to reduce impacts to less-than-significant levels derives from CEQA and applies only when these measures are feasible. In addition, it would be helpful to note that other enhancement measures may be required as a result of other legal requirements, particularly the requirements applicable to the federal resource agencies.

On behalf of the State Water Contractors, I wish to express our appreciation for being able to comment on SD2 and the NOP. We look forward to continuing to work with you on the

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relicensing of the Oroville facilities. Should you have any questions regarding these comments, please contact Dr. Craig Jones at 916-447-7357.

Sincerely,

A handwritten signature in black ink, appearing to read 'John Coburn', with a long horizontal flourish extending to the right.

John Coburn
General Manager

cc: State Water Contractors Member Agencies
SWC FERC Ad Hoc Committee